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BEFORE HIS MAJESTY IN COUNCIL.

BOOK

PRINCE EDWARD ISLAND.

APPEAL

BETWEEN

EDMUND WATERS, . . . Appellant.

AND

JOHN YOUNG and } Respondents.
WILLIAM YOUNG, }

CASE OF THE RESPONDENTS.



R. S. ATCHESON,
For the Respondents.

London: Printed by T. Davison, Lambeth-street, Whitechapel.

BEFORE HIS MAJESTY IN COUNCIL.

FROM

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ON APPEAL FROM PRINCE EDWARD ISLAND,

BETWEEN

EDMUND WATERS, Appellant,

AND

JOHN YOUNG and WILLIAM YOUNG, . Respondents.

CASE OF THE RESPONDENTS.

THE appellant was, at the time when the transactions in question in this cause occurred, and for several years before had been, a merchant in London, carrying on trade in copartnership with one Alexander Birnie, under the firm of Alexander Birnie and Co.; and he also carried on trade in Charlotte Town, Prince Edward Island, in North America, in copartnership with the said Alexander Birnie, under the firm of Waters and Birnie. The trade of the firm in Prince Edward Island, for several years immediately preceding the year 1813, was carried on by Mr. George Birnie, son of the said Alexander Birnie, and now carrying on business in London together with him, in copartnership. The said George Birnie, during his residence in Prince Edward Island, transacted business as the general agent of Messrs. Waters and Birnie to a great extent, in buying and selling, drawing bills, contracting debts, consigning British and other goods for sale to Quebec and Halifax and other distant markets, and settling accounts in all respects as merchants are used to do in the said island.

In the year 1813, Mr. William Pleace came out from London to Prince Edward Island to succeed Mr. George Birnie (on his return to England) as the agent of Messrs. Waters and Birnie. He was furnished with a power of attorney from Messrs. Waters and Birnie, and also a separate power of attorney from the said appellant Edmund Waters; and from that time until the year 1816, he conducted the affairs of the said Messrs. Waters and Birnie in the island in the same way as the said George Birnie had done before. The said William Pleace, during the period of his agency, imported from Halifax property to the amount of 6000*l.* and upwards upon the account of the said Messrs. Waters and Birnie, and his conduct in so doing was fully sanctioned by the said Messrs. Waters and Birnie, as appears from the communications with Mr. Fade Goff, their agent, hereinafter mentioned.

The appellant and also the said Messrs. Waters and Birnie afterwards, in the year 1816, determined on appointing Mr. Fade Goff of Charlotte Town, Prince Edward Island, to succeed Mr. Pleace in the management of the business in the Island, and accordingly they executed a power of attorney to the said Fade Goff; and the said appellant Edmund Waters executed a separate power of attorney to the said Fade Goff, and they transmitted the same, together with a letter, of which the following is an extract, to the said Fade Goff.

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"You will observe to let all persons know, indebted to the concern jointly or severally, on account of rent, goods, or otherwise, not to pay any one but yourself. You will also cause [notices] to be inserted three times, in the Island newspaper and Halifax Gazette, stating that Mr. William Pleace no longer acts as agent to the house of Birnie and Co. of London, or of Charlotte Town, Prince Edward Island; and also notify any persons with whom he may have transacted business at Halifax, Newfoundland, or other places, of the same in writing.

The said Fade Goff, upon the receipt of the said letter and powers of attorney, took upon him the said agency, and immediately published, in the most effectual manner, the following

NOTICE.

"Messrs. Edmund Waters and Alexander Birnie of London, carrying on trade in Charlotte Town, Prince Edward Island, under the firm of Waters and Birnie, having respectively by powers of attorney, dated at London, 9th of April last, appointed the subscriber their agent in North America to transact all business of their concern in the room of Mr. William Pleace, the public are hereby notified thereof, and all persons indebted to the said firm, or to said Edmund Waters, either by bond, note, book-debt, rent, or otherwise, are requested to discharge the same without delay to the subscriber; and those who may have any claims will present them for adjustment and liquidation.

(Signed)

"FADE GOFF,

"Agent to Waters and Birnie, and Edmund Waters.

"Charlotte Town, Prince Edward Island,
June 5, 1816."

The said Fade Goff, by his first letter to the said Messrs. Waters and Birnie, dated June 14, 1816, informed the said Messrs. Waters and Birnie of the steps he had taken, and inclosed therein a copy of the said notice. The receipt of this letter was duly acknowledged by the said Messrs. Waters and Birnie, and no objection was ever made by them to the terms of the notice.

The stock in hand of the said Messrs. Waters and Birnie, at the time when the said Fade Goff became their agent, consisted principally of articles which had remained on hand as unsaleable during a course of dealing for many years; and as many of them were ill suited to the market of the island, the said Fade Goff determined to consign a portion of them for sale to the said respondents, who then were, and still are, merchants, carrying on business at Halifax, in Nova Scotia, with the intent of taking in exchange other articles better suited to the market of Charlotte Town, and likely to be serviceable in assisting him to dispose of the residue of the stock of the said Messrs. Waters and Birnie. Mr. Fade Goff apprised the said Messrs. Waters and Birnie of his intention in this respect by letter, dated September 10, 1816; and again by letter of October 5, 1816, apprised the said Messrs. Waters and Birnie of his having made the purchases in question in this cause from Messrs. Young and Co., and also of his having made other purchases from Messrs. Moody and Boyle, merchants at Halifax, from whom Mr. Pleace had been in the habit of making purchases in the capacity of agent to the said Messrs. Waters and Birnie.

The following extracts are from the two last letters:—

Extract of Letter dated Charlotte Town, September 10, 1816.

"I have further to acquaint you, that in consequence of the recommendation of Mr. John Young, of the house of John Young and Co. of Halifax, who was here a short time ago, I have forwarded, consigned to their care, the silks, kerseymeres, velvets, indigo, and noyau, for the purpose of exchanging them for articles that are saleable in the market. These would not have gone off here for years, and the declining state of quality of part of the goods made some measure of this nature

requisite. I have also forwarded the cases of furniture, which Mr. Young stated he felt confident could be disposed of to some of the government officers."

Extract of Letter dated Halifax, October 5, 1816.

"In my last I acquainted you I had forwarded the following unsaleable articles, being part of your stock at Prince Edward Island, to this place, addressed to the care of Messrs. John Young and Co., to dispose of to best advantage for your account, viz. silks, velvets, indigo, noyau, kerseymeres, and the household furniture in cases. These articles could not be disposed of at the island, and several of them were lessening seriously in quality. Messrs. Young and Co. assure me that no exertion shall be wanting on their part to get them off at the least possible loss: and I have selected from their stock, which is very general, and well laid in, such articles as are suitable for the island sale, which I trust I shall be able to run off there on terms that will counterbalance the loss on the first-mentioned articles. This arrangement was doing the best in my power under the circumstances, and will, I trust, meet your approbation. I have also laid in our winter stock of rum and sugar from Moody and Boyle, payable in spring; the former at 3s. 10d. per gallon, subject to the long drawback of 1s. 1d.; the latter at 60s. and 70s., two qualities. A stock of this kind was indispensable to running off the other goods, and I trust they will leave profit, and that I shall be punctual in remittances."

The said Messrs. Waters and Birnie, by a letter dated November 8, 1816, replied to the letter of September 10, 1816, and expressed no disapprobation of the purchases intended to be made at Halifax by Mr. Fade Goff; and with respect to the purchases formerly made at the same place by Mr. Pleace as their agent, they express themselves as follows:—

"We are glad to hear that you found so little difficulty in getting possession of our property on hand, and hope Mr. Pleace will be able to furnish you with a satisfactory account of money matters. His charge for salary is right, and if he is equally so in profits upon his Halifax purchases it will be well."

The said Messrs. Waters and Birnie, moreover, never did, during any part of their correspondence with the said Fade Goff (which continued down to the month of April 1818), in any way repudiate or express disapprobation of the purchases so made, but on the contrary thereof, in their letter of April 8, 1818, they state that they have a high opinion of the integrity of the said Fade Goff, and they permitted the said goods to be sold by the said Fade Goff on their account, and the produce thereof to be applied to their use.

In October 1817, William Young, one of the respondents, went to Charlotte Town, when the sales of the goods consigned to respondents being exhibited, a balance was settled and struck, and the sum of 1438*l.* 12*s.* 9*d.* currency, was found to be due from the said Messrs. Waters and Birnie to the respondents; and the said William Young finding that the said Fade Goff had no available funds belonging to the said Messrs. Waters and Birnie to meet so heavy a claim, and the said Fade Goff being satisfied that he could not oppose any valid defence against the claim of the said respondents, who would have sued the appellant, and obtained judgment and levied execution on his personal estate, in October 1817 granted a warrant of attorney or attorneys therein named, to confess judgment in the Supreme Court of Judicature in Prince Edward Island, in an action at the suit of the respondents against the said appellant, to secure the said debt of 1438*l.* 12*s.* 9*d.*, with a condition that execution should issue only against the real estate of the said appellant. On this warrant of attorney judgment was entered up on the 30th March, 1818; but the said Fade Goff prevailed on the said respondents not to issue execution on the said judgment, and the same was suspended until the 22d August, 1820, at which date execution issued against the landed estate of the appellant for the sum of 600*l.* 14*s.* currency, the balance then due, the original debt having been in the mean time reduced by payments made by the said Fade Goff, and by the sale of part of the goods consigned to Halifax as aforesaid. In the month of July, 1822, the appellant moved

the court that the said judgment and all the subsequent proceedings should be set aside, and the warrant of attorney taken off the file to be cancelled, and a rule was made to that effect, unless cause should be shown to the contrary; and afterwards the said respondents showed cause in opposition to the said rule, and on proof of the several facts above set forth, the said rule was discharged with costs.

The appellant thereupon appealed against the decision above mentioned to the Court of Error and Appeals in the said island, by which court the appeal of the said appellant was dismissed with costs. Whereupon the appellant has appealed to his Majesty in Council, but the respondents humbly hope the decision of the courts below will be confirmed with costs, to be paid to the said respondents for the following amongst other

REASONS:

First,—Because the appellant having specially authorised the said Fade Goff to appear for him in all courts, must be bound by what he does in pursuance of the said power.

Secondly,—Because by the appointment of the said Fade Goff as the agent of the appellant individually as well as of the said appellant and his partner jointly in the stead of Pleace, and by the appellant testifying no disapprobation of the purchases of the goods in question, and by permitting the same to be sold on the account of himself and his said partner, and the monies to be applied to their use, the appellant must be considered to have sanctioned those purchases.

Thirdly,—Because by allowing the said Fade Goff to hold himself out to the world as the general agent of the appellant, and also of the appellant and his said partner, the appellant became responsible for acts done by the said Fade Goff in that character.

Fourthly,—Because the appellant having had the benefit arising from the sale of the goods, ought in justice to pay the price of them.

W. HARRISON,
THOS. COLTMAN.

